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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 MARKELLE NEAL TAYLOR,

No. 2:05-cv-00788-MCE-GGH P

12 Petitioner,

13 vs.

ORDER

14 TOM CAREY, et al.,

15 Respondents.
16 _____/

17 Petitioner, a state prisoner proceeding through counsel, has timely filed a notice of appeal
18 of this court's October 8, 2008, denial of his application for a writ of habeas corpus. Before
19 petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c);
20 Fed. R. App. P. 22(b).

21 A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has
22 made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The
23 certificate of appealability must “indicate which specific issue or issues satisfy” the requirement.
24 28 U.S.C. § 2253(c)(3).

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1 A certificate of appealability should be granted for any issue that petitioner can
2 demonstrate is “debatable among jurists of reason,” could be resolved differently by a different
3 court, or is “adequate to deserve encouragement to proceed further.” Jennings v. Woodford,
4 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

5 Petitioner has made a substantial showing of the denial of a constitutional right in the
6 following issues presented in the instant petition: 1) prosecutorial misconduct; 2) jury instruction
7 error regarding felony murder.

8 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is issued in the
9 present action.

10 Dated: November 14, 2008

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12 MORRISON C. ENGLAND, JR.
13 UNITED STATES DISTRICT JUDGE
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25 ¹ Except for the requirement that appealable issues be specifically identified, the standard
26 for issuance of a certificate of appealability is the same as the standard that applied to issuance of
a certificate of probable cause. Jennings, at 1010.